

**Appln No. 09/885,307**  
**Amdt date October 18, 2007**  
**Reply to Office action of July 18, 2007**

**REMARKS/ARGUMENTS**

Claims 1-6, 9, 11, 24-29, 32, 33, 57, 59-65, 68, 70, 72-78 and 81-84 are currently pending in this application. Claims 2-5, 9, 11, 25-28, 32-33, 57, 59-60, 62-64, 70, 72-73, 75-78, and 81-84 have been amended. Claims 1, 24, 61, 68, and 74 have been canceled. Claims 85-87 have been added. The amendments find full support in the original specification, claims, and drawings. No new matter has been added. In view of the above amendments and remarks that follow, reconsideration and an early indication of allowance of claims 2-6, 9, 11, 25-29, 32-33, 57, 59-60, 62-64, 70, 72-73, 75-78, and 81-87 are respectfully requested.

Claims 1-6, 9, 11, 24-29, 32, 33, 59-64, 68, 72-78 and 81-84 are rejected under 35 U.S.C. 103(a) as being unpatentable over Knee et al. (U.S. Pub. No. 2006/0242665) in view of Gaske et al. (U.S. Patent No. 6,961,430). Claims 57 and 70 are rejected under 35 U.S.C. 103(a) as being unpatentable over Knee and Gaske and further in view of Blum (previously cited). Applicant respectfully traverses these rejections.

Independent claim 64 has been amended to recite:

receiving first audio characteristic information for a first audio piece;  
receiving second audio characteristic information for a second audio piece;  
selecting the first and second audio pieces based on a comparison of respectively the first and second audio characteristic information with the user audio preference information;  
identifying first and second audio channels configured to respectively deliver the first and second audio pieces;  
identifying first and second delivery times in which the first and second audio channels are configured to deliver the first and second audio pieces;  
automatically tuning to the first audio channel for receiving the selected first audio piece based on the identified first audio channel and the identified first delivery time;  
automatically tuning, without user intervention since the tuning to the first audio channel, to the second audio channel for receiving the selected second audio piece based on the identified second audio channel and the identified second delivery time;

**Appln No. 09/885,307**  
**Amdt date October 18, 2007**  
**Reply to Office action of July 18, 2007**

temporarily storing in a buffer as the customized audio program the received first and second audio pieces; and

outputting the temporarily stored audio pieces responsive to a detected playback condition which invokes playback of the customized audio program.

Knee fails to teach or suggest these limitations. Specifically, Knee is directed to an interactive television program guide system that gathers information on television viewing and music listening habits of a user. Knee teaches that when the user equipment is turned on, the interactive television program guide automatically tunes the user equipment to an appropriate digital music channel. (See, Abstract). This channel may be selected based on the user's television viewing habits, music listening habits, the user's interactions with the program guide, or the settings selected by the user. (See, Abstract). Once Knee's user equipment is automatically tuned to the selected channel, a user intervention is required to tune to a different channel. Although this user intervention may be as simple as turning off the user equipment and starting it up again, such user intervention is nonetheless required to cause another automatic tuning. Thus, Knee fails to teach or suggest "automatically tuning, without user intervention since the tuning to the first audio channel, to the second audio channel for receiving the selected second audio piece based on the identified second audio channel and the identified second delivery time." (Emphasis added).

In addition, nothing in Knee teaches or suggests "selecting the first and second audio pieces based on a comparison of respectively the first and second audio characteristic information with the user audio preference information." Such fine level of granularity is not taught nor suggested by Knee. Instead, Knee selects an appropriate music channel based on the monitored music listening habits. (See, par. 0128).

Furthermore, Knee fails to teach or suggest "identifying first and second delivery times in which the first and second audio channels are configured to deliver the first and second audio pieces." (Emphasis added). Knee has no reason to identify such delivery times because, as discussed above, Knee does not attempt to receive specific audio pieces. Instead, once the

**Appln No. 09/885,307**  
**Amdt date October 18, 2007**  
**Reply to Office action of July 18, 2007**

appropriate channel is identified, the user equipment automatically tunes to such channel upon power-up and receives whatever music is delivered by the tuned channel at the tune time.

As Knee does not attempt to select and receive "first and second audio pieces based on a comparison of respectively the first and second audio characteristic information with the user audio preference information," Knee also fails to teach or suggest "temporarily storing in a buffer as the customized audio program the received first and second audio pieces." Gaske does not make up for this deficiency. The combination of Knee and Gaske simply results in adding to Knee's system a method for background caching of pay-per-view (PPV) programs for later playback. Specifically, "[w]hen the selected PPV recording is complete, the host processor 310 then searches for another, not previously recorded PPV event to record. The above procedure is then repeated. Over the course of a week or so, all PPV events on the satellite system can be recorded to HDD 320 in this manner." (Col. 10, lines 25-32). Gaske does not attempt to select specific programs to record, and much less, record programs "based on a comparison of respectively the first and second audio characteristic information with the user audio preference information." For all these reasons, claim 64 is now in condition for allowance.

Independent claims 78 and 84 include limitations that are similar to the limitations of claim 64 which make claim 64 allowable. Accordingly, claims 78 and 84 are also in condition for allowance.

Claims 2-6, 9, 11, 25-29, 32-33, 57, 59-60, 62-63, 70, 72-73, 75-77, and 81-83 are also in condition for allowance because they depend on an allowable base claim, and for the additional limitations that they contain.

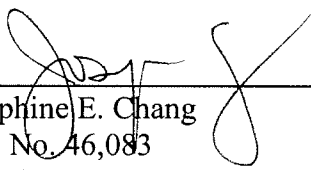
Claims 85-87 are new in this application. Claims 85-87 are also in condition for allowance because they depend on an allowable base claim and for the additional limitations that they contain. Specifically, claim 85 adds the limitation that "the automatic tuning to the second audio channel occurs during the playback of a portion of the customized audio program." Support for this limitation is found in various parts of the specification, such as, for example, on page 12, lines 19-27. None of the cited references teach or suggest these limitations. Accordingly, claim 85 is also in condition for allowance for this additional limitation.

**Appln No. 09/885,307**  
**Amdt date October 18, 2007**  
**Reply to Office action of July 18, 2007**

Claim 86 adds the limitation that "the automatic tuning to the second audio channel does not interrupt the playback of the customized audio program." Support for this limitation is found in various parts of the specification, such as, for example, on page 12, lines 1-27. None of the cited references teach or suggest these limitations. Accordingly, claim 86 is also in condition for allowance for this additional limitation.

In view of the above amendments and remarks, reconsideration and an early indication of allowance of the now-pending claims 2-6, 9, 11, 25-29, 32-33, 57, 59-60, 62-64, 70, 72-73, 75-78, and 81-87 are respectfully requested.

Respectfully submitted,  
CHRISTIE, PARKER & HALE, LLP

By   
Josephine E. Chang  
Reg. No. 46,083  
626/795-9900

JEC/kjd

LAL PAS750846.1-\* -10/18/07 2:26 PM